

REMARKS/ARGUMENTS

Reconsideration of this patent application is respectfully requested in view of the following remarks.

The claims are 1-10, 19, 21-23, 25-29.

The Examiner has rejected claims 1-10, 19, 21-23 and 25-29 which are rejected under 35 U.S.C. 103(a) as being obvious over Erras et al (DE 44 16 504 as cited by applicant), references made to machine translation, as modified by Caprioglio (US 5,811,750) in view of Nishimura (JP 05192774 as cited by applicant), Suita (US 2001/0045413) and *Stieglbauer et al* (WQ 2004/022278) with references made to (US 7,259,349).

The Examiner has stated that:

The applied reference (Stieglbauer) has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal

disclaimer in accordance with 37 CFR 1.321 c.

The applicant is presenting evidence or showing that under option 2 presented above, the document to *Stieglbauer et al.* should not serve as "prior art" as presented above.

For example, enclosed please find a copy of the certified translation of the priority document, that of ATA1023/2003 which was filed on July 3, 2003, which was prior to the effective US filing date of *Stieglbauer et al* which is either WO2004/02278 or U.S. Patent No. 7,259,349 which has an effective U.S. filing date of February 4, 2005 which is after the filing date of the priority document of the present application. The 102e date is February 4, 2005 and not the filing date of the filing of the international application because the international application was not published in English. 35 U.S.C. 102 e is shown below (emphasis provided):

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and **was published under Article 21(2) of such treaty in the English language;**

It is respectfully submitted that with the submission of the certified translation of the priority document, it thereby establishes the priority date of the present application back to July 3, 2003. See MPEP 2304.01(c) as well as MPEP 1893.03(c). Thus, this July 3, 2003 date predates the *Stieglbauer et al* document which has a U.S. filing date of February 4, 2005, which

is after this priority date. Therefore, the *Stieglbauer et al* document should not serve as a prior art document with respect to the present application.

In conclusion, claims 1, 19 and 21 have been amended. Claims 1-10, 19, 21-23, 25-29 remain in the application.

Accordingly, early allowance of the remaining claims is respectfully requested as it is respectfully submitted that the applicant has satisfied the above criteria no. 2 set forth by the Examiner and has established that the present application has a priority date back to July 3, 2003, which is prior to the February 4, 2005 date which is the effective U.S. filing date of *Stieglbauer et al*.

Respectfully submitted,
Walter STIEGLBAUER ET AL

/William C. Collard/

COLLARD & ROE, P.C.
1077 Northern Boulevard
Roslyn, New York 11576
(516) 365-9802
WCC:

Frederick J. Dorchak, Reg.No.29,298
William C. Collard, Reg.No. 38,411
Edward J. Callaghan, Reg. No. 46,594
Attorneys for Applicant

Enclosure(s): Certified Translation and Certification of Translation